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James Freas
Acting Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: May 10, 2016
Land Use Action Date: July 26, 2016
City Council Action Date: August 1, 2016
90-Day Expiration Date: August 8, 2016

DATE: May 6, 2016

TO: City Council

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #131-16** for a SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing detached garage and construct a new wider garage connected to the principal structure which exceeds nonconforming FAR, at 37 Westbourne Road, Ward 7, Chestnut Hill, on land known as SBL 73 45 09 containing approximately 8,090 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 3.1.9, 7.8.2.C.2, 7.3.3, 7.4 3.1.3 of Chapter 30 of the City of Newton Rev Zoning Ord., 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



37 Westbourne Road

EXECUTIVE SUMMARY

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a single-family residence constructed in 1896 and a detached one-car garage constructed in 1929. The lot has two frontages; 82 feet on Westbourne Street and approximately 90 feet on Francis Street; the house and garage face Westbourne Road. The existing garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback.

The applicant proposes to demolish the existing detached garage and construct, in the same area of the property, an approximately 348 square foot addition to the home that would include a new attached single-car garage accessed from Francis Street, additional kitchen space and an interior stairway with a chair lift. The petitioners are also proposing to construct a 210 square foot (14.9 foot by 13.4 foot) one-car carport on a section of the existing driveway which would also be connected to the expanded kitchen by way of the proposed stairway and chair lift. The proposed modifications would make the home accessible to the applicant's adult daughter who uses a wheelchair and visits the house.

The proposed modifications would increase the dwelling's already nonconforming FAR from 0.52 to 0.59, where 0.41 is the maximum allowed by right, requiring a special permit.

As the proposed modification involves demolishing a detached garage and building an addition to the existing principal structure, the entire resulting structure will need to meet the setback requirements for a principal structure. Since the proposed garage and carport would be located within side and front setbacks, 15 feet and 30 feet respectively, a variance from the Zoning Board of Appeals will also be needed.

The Planning Department is generally not concerned with the project as the proposed addition would replace an existing garage of similar scale in the same location and it sensitively addresses the issue of access to the home. The proposed addition as developed and operated will improve the quality of life for its residents while not adversely affecting the surrounding neighborhood. For these reasons, the Planning Department believes the extension of this nonconforming structure with respect to FAR will not be substantially more detrimental than the existing structure is to the neighborhood.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- the proposed addition will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§7.8.2.C.2).
- The proposed increase in FAR from 0.52 to 0.59, where 0.41 is the maximum allowed by right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9.A.2 and §7.8.2.C.2)

I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The surrounding area is a mix of similarly scaled one- two- and three- family dwellings (**Attachment A**), with the properties along Westbourne Road zoned Single Residence 2 and those to the rear along Francis Street and Garner Street zoned Multi-Residence 1 (**Attachment B**).

B. Site

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a 4,185 square foot single-family residence constructed in 1896 and a detached 268 square foot garage constructed in 1929. The lot has two frontages: 82 feet on Westbourne Street to the front, and approximately 90 feet on Francis Street to the rear. The existing detached garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback.

The site is flat and vehicular access is provided by an existing driveway and curb cut from Westbourne Road on the north side of the dwelling.

II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a single-family residence, enlarged with the addition that includes an attached garage and carport.

B. Building and Site Design

The petitioners are proposing to demolish the existing detached garage and construct a 348 square foot addition to the home that includes a new, attached garage, additional kitchen space and an interior stairway with a chair lift. The garage will be located approximately one foot further from both Francis Street and the northern property line than the existing garage, thus improving the existing nonconforming setbacks.

The petitioners are also proposing to construct an attached 210 square foot (14.9 foot by 13.4 foot) carport above a portion of the existing driveway that would also be connected to the expanded kitchen by way of the proposed stairway and chair lift.

The proposed modifications will increase the already nonconforming FAR from 0.52 to 0.59, where 0.41 is the maximum allowed by right.

C. Parking and Circulation

As the vehicular entry to the new attached garage would be located on Francis St, an additional curb cut would be required on that street. The existing curb cut and

driveway on Westbourne Road would be used to access the proposed carport.

The Planning Department notes that the proposed modifications to the garage, house and site are requested to make the home accessible to the applicant's adult daughter who uses a wheelchair and visits the house.

Given the garage's close proximity to Francis Street, the Planning Department suggests that the petitioner consider install a mirror or mirror system that would allow drivers leaving the garage to better see nearby pedestrians and/or vehicles.

D. Landscape, Lighting and Signage

The site is largely lawn with some trees and shrubs; a fenced area encompasses the rear and a portion of south side yard and includes a deck adjacent to the dwelling and existing detached garage. There is also a fence and vegetation along the norther property line with the adjacent property at 31 Westbourne Road.

While the Planning Department believes that the existing vegetation is adequate, it does recommend the petitioners ensure that vegetative screening and or fencing be maintained along the portion of the driveway that would be occupied by the proposed carport to minimize the impact of that structure and use.

III. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- §3.1.9 of Section 30, to increase nonconforming Floor Area Ratio (FAR)

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit for the proposed addition should this project be approved.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:



- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Draft Order

DRAFT

Zoning Map 37 Westbourne Rd.

City of Newton,
Massachusetts

Legend

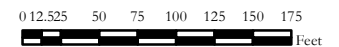
-  Single Residence 2
-  Multi-Residence 1

Attachment A

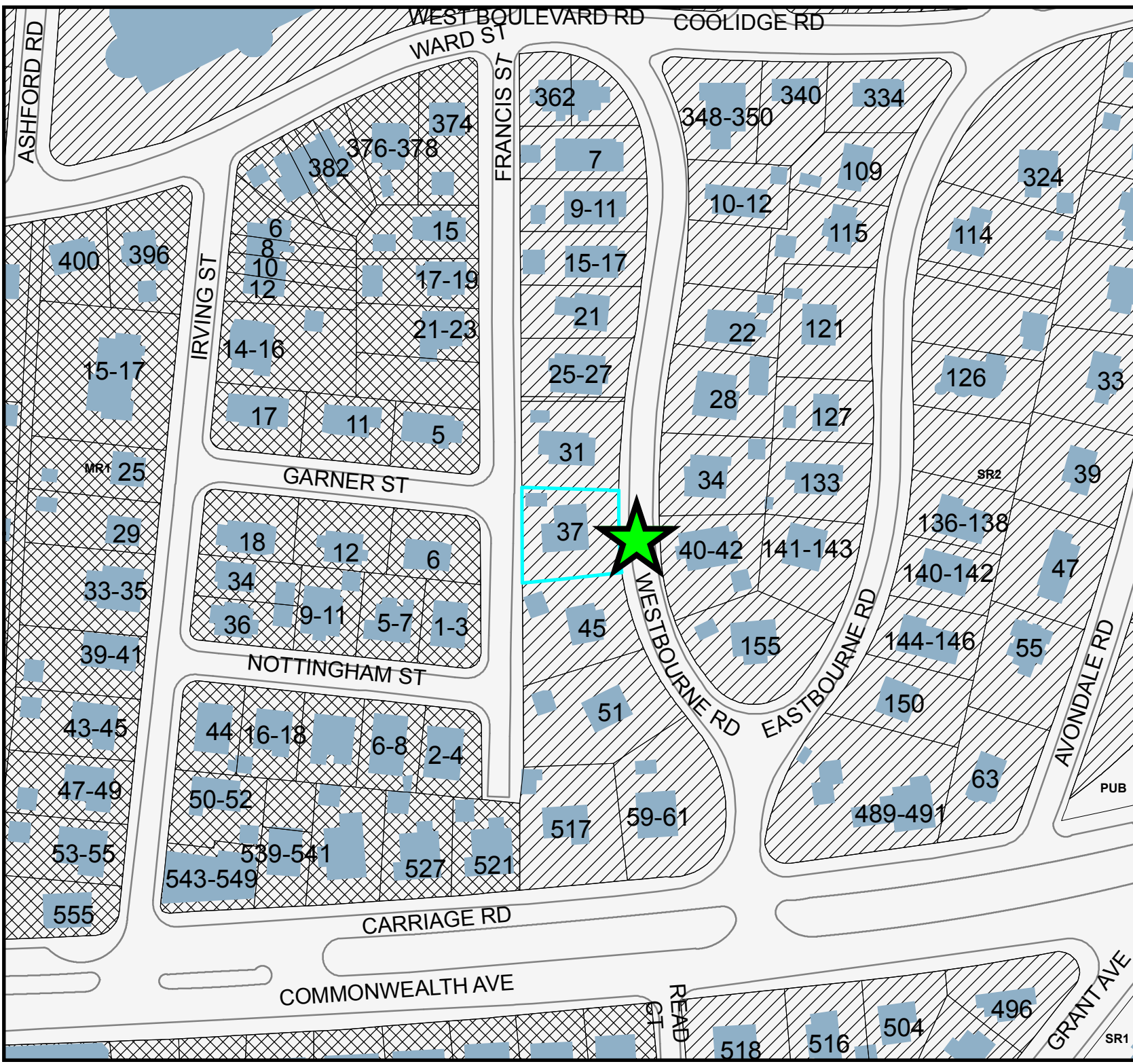


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield






Map Date: May 05, 2016



Land Use Map 37 Westbourne Rd.

*City of Newton,
Massachusetts*

Legend

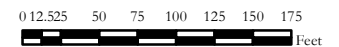
- Land Use**
Land Use
-  Single Family Residential
 -  Multi-Family Residential
 -  Vacant Land

Attachment B

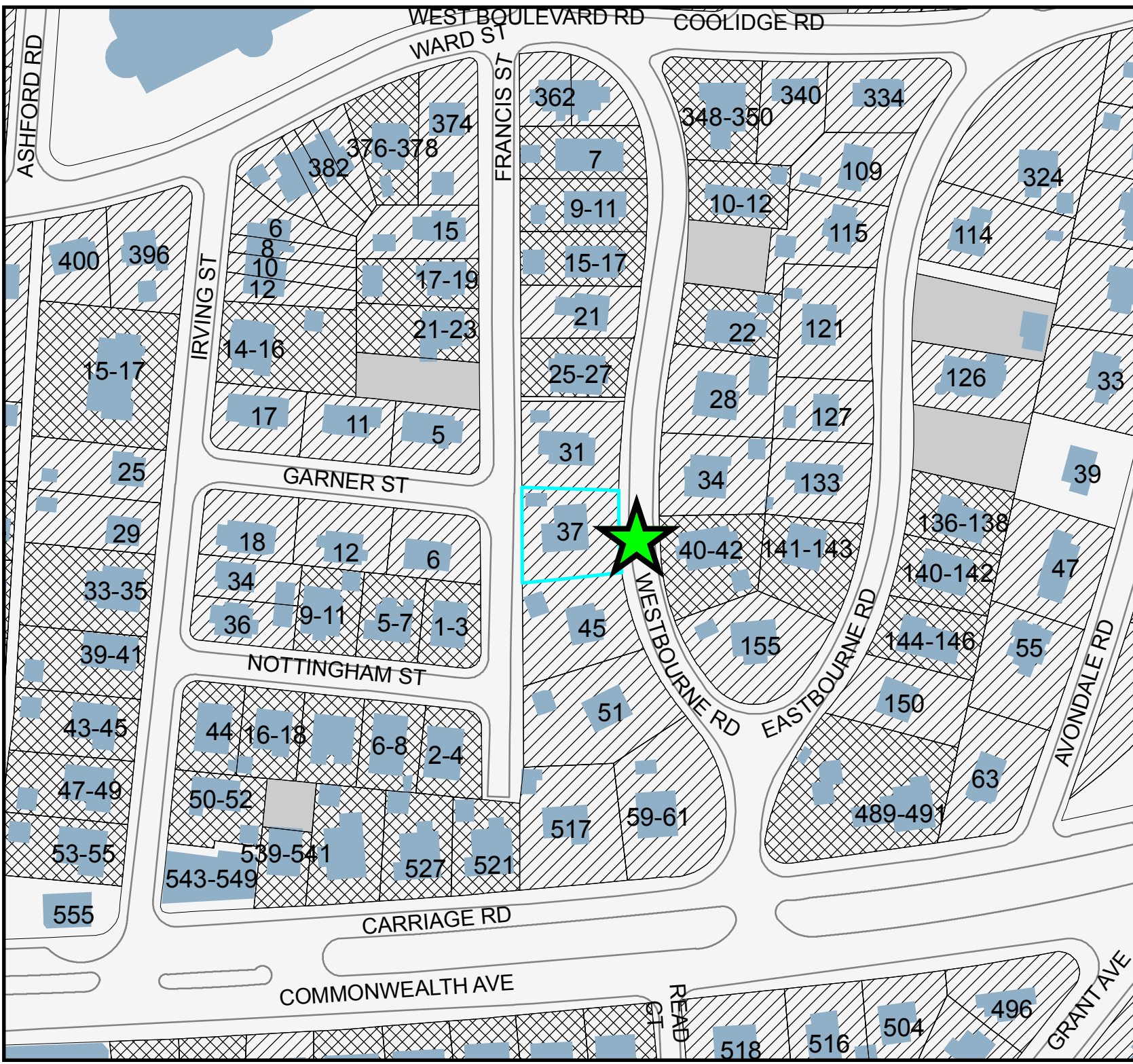


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Map Date: May 05, 2016





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James Freas
Acting Director

ZONING REVIEW MEMORANDUM

Date: April 11, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Joyce Zakim, Applicant
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request for a special permit to exceed nonconforming FAR and variances from side and front setbacks and lot coverage requirements

Applicant: Joyce Zakim	
Site: 37 Westbourne Road	SBL: 73045 0009
Zoning: SR2	Lot Area: 8,090 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a single-family residence constructed in 1896 and a detached garage constructed in 1929. The lot has two frontages; 82 feet on Westbourne Street to the front, and approximately 90 feet on Francis Street to the rear. The existing detached garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback. The applicant proposes to demolish the existing detached garage to construct a new wider attached garage which is connected to the principle structure by an interior stairway with a chair lift. The proposed modifications to the garage, house and site are necessary to make the home accessible to the applicant's adult daughter who uses a wheelchair. A new curb cut from Francis Street is proposed to connect with the proposed garage.

The proposed modifications will increase the already nonconforming FAR from .52 to .59, where .41 is the maximum allowed by right. A special permit will be required to increase the nonconforming FAR.

The proposed modification demolishes the detached garage and creates an attached situation. Because of this change, the setback requirements for a principle structure must be met. The proposed

garage and carport have a side setback of 2.1 feet and will be located 5.4 feet from the front setback on Francis Street. Variances will be required to reduce the side and front setback.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Joyce Zakim, applicant, submitted 1/13/2014
- Plan of Land, Existing Conditions, signed and stamped by Bruce Bradford, surveyor, dated 2/18/2014
- Site Plan, proposed conditions, signed and stamped by Bruce Bradford, surveyor, dated 2/18/2014
- Architectural drawings, prepared by IHCDstudio, dated 5/29/2013

ADMINISTRATIVE DETERMINATIONS:

1. The existing FAR for the structure is .52, which exceeds .41, the maximum FAR allowed for the property. The applicant proposes to attach the single-car garage and enlarge it by 179 square feet, and to add 170 square feet of interior living space. In addition, the applicant is proposing an approximately 200 square foot carport attached to the house and garage. Because the carport is open on only two sides (where the Ordinance defines a carport as being open on three sides), it counts toward FAR, creating an FAR of .59. A special permit is required to exceed the allowable FAR, and to increase the existing nonconforming FAR.
2. By attaching the garage to the dwelling, the structure must meet the setback requirements for the principle dwelling of 25 feet from the front property line and 7.5 feet from the side lot line, and may not take advantage of the detached garage's protected nonconforming setbacks. The proposed work creates a side setback of 2.1 feet and a front setback of 5.4 feet from Francis Street, decreasing the existing nonconforming setback of 4.8 feet. The applicant is proposing the modifications to the site to accommodate a daughter who uses a wheelchair. There currently exists a ramp on the property, which is exempt from meeting any zoning requirements per MGL Chapter 40A section 3. While the proposed modifications are to accommodate the daughter's access, they are not exempt under any state or federal requirements because she is not a resident of the dwelling. Variances from the front and side setbacks are required to build the project as proposed.
3. The existing lot coverage for the site is 23.4%. The proposed modifications to the site will create a lot coverage of 33.6%, which exceeds the maximum of 30%. However, section 1.5.2.D.2 states that lot coverage requirements shall not apply to the construction of a private garage in connection with a residence in existence on December 27, 1922. The dwelling was built in 1896, and therefore not subject to the lot coverage requirements for the erection of the garage. With the square footage of the proposed garage removed from the equation, the lot coverage is 25.5%.

SR3 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	8,090 square feet	No change
Frontage	80 feet	82 feet	No change
Setbacks for existing structure			
• Front	25 feet	4.8 feet	5.4 feet
• Side	7.5 feet	+/- 2.5 feet	2.1 feet
Max. Lot Coverage	30%	23.4%	25.5%
Min. Open Space	50%	57%	58%
FAR	.41	.52	.59

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.9 §7.8.2.C.2	To exceed existing nonconforming FAR	S.P. per §7.3
§3.1.3	For a front lot setback of 5.4 feet	Variance
§3.1.3	For a side lot setback of 1.1 feet	Variance

ATTACHMENT D

DRAFT #131-16
37 Westbourne Road

CITY OF NEWTON

IN CITY COUNCIL

May 16, 2016

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to construct an approximately 348 square foot addition to the home that includes a new attached garage accessed from Francis Street, additional kitchen space and an interior stairway with a chair lift and to construct a 210 square foot carport on a section of the existing driveway which together will further increase the non-conforming Floor Area Ratio from 0.52 to 0.59, where .41 is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The extension of the nonconforming structure with the proposed addition will not be substantially more detrimental than the existing nonconforming structure as it will largely occupy the location of an existing, similarly sized garage. (§3.2.3. and 7.8.2.C.2.)
2. The proposed Floor Area Ratio (FAR) of 0.59, where 0.41 is the maximum allowed by right and 0.52 exists, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. The addition and carport will increase the gross floor area by only approximately 348 square feet on a lot of 8,090 square feet and the addition will be located largely where an existing garage and an outdoor deck will be removed. (§3.1.9.A.2 and §7.8.2.C.2)
3. The site in a Single Residence 2 zoning district is an appropriate location for the proposed addition and carport as they are consistent with the residential use of the property. (§7.3.3.C.1)
4. The expanded structure will not adversely affect the neighborhood as the addition will be located largely at the location of an existing garage and outdoor deck which shall be removed and the carport will be setback approximately 40 feet from Westbourne Road and be largely shielded by existing fencing and vegetation. (§7.3.3.C.2)
5. Neither the addition nor the carport will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3).

PETITION NUMBER: #131-16

PETITIONER: Joyce Zakim and Peter Greenspan

LOCATION: 37 Westbourne Road, on land known as Section 73, Block 45, Lot 9, containing approximately 8,090 square feet of land

OWNER: Joyce Zakim and Peter Greenspan

ADDRESS OF OWNER: 37 Westbourne Road
Newton, MA 02459

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9. and §7.8.2.C.2., to further increase a nonconforming structure with respect to FAR.

ZONING: Single Residence 2 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Plan of Land, 37 Westbourne Road, Proposed Conditions, signed and stamped by Bruce Bradford, surveyor, dated 2/18/2014
 - b. Architectural drawings, entitled "Renovations to 37 Westbourne Road, Newton, MA 02459- Special Permit Set," prepared by Kessler, McGuinness & Associates, LLC, dated March 8, 2016:
 - i. Proposed First Floor Plan (A1.1);
 - ii. Existing First Floor (X1.1);
 - iii. Demolition Plan First Floor (D1.1)
 - iv. Proposed Elevations (A2.1);
 - v. Existing Elevations (X2.1).
2. Petitioners receive required variances from the Zoning Board of Appeals from front lot setback and side lot setback dimensional regulations.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:

- a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.